IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.3016 OF 2005

Jayraj Vasantraya Vasa & Ors. ....Petitioners.

Vs.

Ramchandra Hindurao Sawant & Ors. ....Respondents.

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Mr.Amit B.Borkar for the Petitioner.

Mr.S.S.Patwardhan for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 20, 2006.

P.C. :

A suit for eviction has been filed against a partnership firm on the ground of non-user. The Petitioners filed an application for impleadment on the ground that they are partners and that they are consequently necessary parties. The Trial Court dismissed the application and the dismissal was affirmed by the Additional District Judge, Kolhapur. The Learned District Judge has relied upon the circumstance that the Partnership Deed

purports to have been entered into with effect from 1st April 1996 though the stamp paper was of 18th April 1996 and that the Register of Firms does not contain the names of the Petitioners. Counsel appearing on behalf of the Petitioners does not dispute the factual position that the Register does not contain the names of the Petitioners, but it has been stated that the firm itself is unregistered. However, it is submitted that that would not operate to prevent the Petitioners asserting the right to continue in occupation and to defend the suit for eviction. At this stage, it is not necessary for this Court to express any view either way on the rival claim and contentions between the parties. There is no reason why the application for impleadment should not be allowed having regard to the claim which has been set up by the Petitioners. It cannot be said that the Petitioners are not necessary parties. However, on behalf of the Respondents it is asserted that impleadment of the Petitioners should not be used as a ruse to delay the proceedings. A statement has been made on behalf of the Petitioners that in the event that the Petitioners are permitted to be impleaded, the Petitioners shall file theirwritten statement within two weeks. In the circumstances, the petition is disposed of in terms of the

following directions:

(1) The impugned order dated 14th October 2004 of the Additional District Judge, Kolhapur is quashed and set aside;

(2) The applications for impleadment at Exhs.63 and 65 shall stand allowed and the newly added parties shall be permitted to file their written statement. The written statement to be filed within a period of two weeks from today.

The Petition is disposed of in the aforesaid terms. However, it is clarified that the present order shall not be construed to express any opinion either way on the merit of the case and all the rights and contentions of the parties are kept open. It would be open to the Trial Judge to set down a time schedule for expeditious disposal of the suit, preferably before 31st December 2006.

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